# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 903 of 1989**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**
**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SECRETARY TO THE GOVT.OF GUJ. & 2 - Appellant(s)**

**Versus**

**DAHYABHAI GULABHAI PATEL & 1 - Defendant(s)**

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**Appearance :**
MR AY KOGJE, AGP for the Appellants
None for the Respondents.
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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**
**and**
**HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 01/09/2005**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Present is an appeal under Section 39 of the

Arbitration Act, 1940 against the order dated 2.2.89 passed by the learned Civil Judge (Senior Division), Ahmedabad (Rural) at Mirzapur in Special Civil Suit No. 160 of 1988, directing appointment of Mr. R.C. Patel, Chief Engineer (Retd.), 8, Sampat Rao Colony, opposite Circuit House, Vadodara-6, as the sole Arbitrator to resolve all the disputes between the parties under Clause-57 of the tender agreement.

2. Learned counsel for the appellant submits that as the claims made by the original plaintiff were rejected after due consideration, the matter could not be referred to the Arbitrator. His submission is that the appointment was absolutely illegal. In the alternative, it is submitted that since after coming into force of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 and as the matter is pending before this Court challenging the appointment of the Arbitrator and as the Arbitrator has not entered into the Reference, the provisions of the Arbitration Act, 1940 cannot be made applicable and the pending proceedings shall stand transferred to the Tribunal constituted under the Arbitration Tribunal Act, 1992.

3. After hearing the appellant at length, we are of the opinion that the learned court below was not unjustified in making the appointment of the Arbitrator under the law as prevalent on the date of the order. It is, however, to be noted that since after appointment of Mr. R.C. Patel as the sole Arbitrator, he could not enter into the Reference nor could start arbitration proceedings and as Section-21 of the Arbitration Tribunal Act, 1992 has come into force and effect, the Arbitrator cannot proceed with arbitration proceedings.

4. Section 21 of the Act reads as under:-

> “21.- Arbitration Act to cease to apply – Provisions of the Arbitration Act, 1940 shall in so far as they are inconsistent with the provisions of the Act, cease to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute before an Arbitrator, Umpire, Court or authority shall stand transferred to the Tribunal.”

In view of the mandatory language employed in Section 21 of the Act, the provisions of the Arbitration Act, 1940

shall cease to apply and any proceedings pending before an Arbitrator, Umpire, Court or authority shall automatically stand transferred to the Tribunal.

5. In the matter of **V.Laxmikant & Company Vs. State of Gujarat, reported in 2000 (2) GLR 1444,** Division Bench of this Court had observed as under:-

> “9. From the above discussion, it is clear that according to the learned Single Judge, even if the Award was passed by Tribunal under 1940 Act, till such an Award became rule of the Court or decree, the proceedings could be said to be pending. ...”

The observations made by the Division Bench would aptly apply to the facts of the present case. As the Arbitrator would have no jurisdiction to proceed with the matter in view of the mandate under the Arbitration Tribunal Act, 1992, we must now set aside the appointment of Mr. R.C. Patel as the sole Arbitrator, remit the matter back to the trial court with a direction that in accordance with Section 21 of the Arbitration Tribunal Act, 1992, it shall transfer the matter to the Arbitration Tribunal. The order passed by the learned

court below is set aside.

6. As none appears for the other side, it is hereby directed that the learned court below shall issue necessary notice to the original plaintiff/present respondent and within 15 days of securing his attendance, the learned court below shall transfer the matter along with the complete records to the Arbitration Tribunal. The appeal to the extent indicated above is allowed, but however, with the directions aforesaid.

***[R.S. GARG, J.]***

***[K.M. MEHTA, J.]***

***pirzada/-***